

In the matter of:

V.

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Findings of Fact

Ms McDowell moved into her unit in January 1997. Her next door neighbor built a deck that almost abutted her deck and installed steps to the ground. Ms McDowell felt that someone could get to her deck and into her house by way of her neighbor's deck. She talked to someone connected with the management of the Condominium who told her that she didn't need permission to install a window guard and someone else who gave her oral permission. She is a little vague about who these people were. This was during the period of transition from developer to homeowner control. She purchased and had the window guard units installed in October 1997. The window guards or bars are on windows on the ground and second floors of Ms McDowell's unit in the rear.

In the spring of 2004, the Condominium Board decided to change the approach taken to enforce maintenance and architectural control from responding to complaints to doing inspections. Following the first inspection many homeowners were informed of required maintenance and architectural violations. Ms McDowell's window guards were among the architectural violations identified. Ms McDowell applied for approval of the window guards and approval was denied. She then appealed to a hearing by the Condominium Board that was held on March 2, 2005. Ms McDowell appeared as did two of her neighbors who indicated that the window guards were "unnoticeable and inoffensive" but the Board required that they be removed by a vote of three in favor and one abstention. The complaint in this case followed.

The Condominium charged Ms McDowell a fine of \$150 for the unapproved window guards and imposed a \$10 per day fine until the guards were removed. Ms McDowell paid the \$150 fine; the daily fine was suspended under the County Code when the complaint in this case was filed.

The Cloverleaf Center II Condominium Bylaws at Article V, Section 17, "Architectural Control," say:

Except for purposes of proper maintenance and repair or as otherwise permitted or required by law or these Bylaws..., it shall be prohibited for any Unit Owner to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, shades, screens, awnings, patio covers, decorations, fences, walls, aerials, antennas (including, without limitation, satellite dishes), radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, or make any change or otherwise alter (including any alteration in color) in any manner whatsoever the exterior of any Unit or the Common Elements within the Condominium..., or to remove or alter any window or exterior doors of any Unit, or to make any change or alteration within any Unit which will alter the structural integrity of any building or otherwise affect the property, interest or welfare of any other Unit Owner, materially increase the cost of operation or insuring the Condominium or impair any easement, until complete plans and specifications, showing the nature, kind, shape, materials and location of the same (including, without limitation, any other

materials and information as may be specified by the Board of Directors or its designated committee) shall have been submitted to and approved in writing as to safety, the effect of any such alterations on the costs of maintaining and insuring the Condominium and harmony of design, color and location in relation to surrounding structures and topography, by the Board of Directors of the Association, or by the Architectural Control Committee designated by the Board of Directors.

The Cloverleaf Center II Condominium Rules include at number 10 the requirement that:

No awnings or window guards shall be used except as shall be put up or approved by the Board of Directors, and no signs of any kind shall be placed in windows or on doors or other exterior surfaces or on patios or other common areas without prior written approval of the Board of Directors.

The Rules also include at number 15 a requirement that window coverings be of materials and construction manufactured for the purpose of serving as window coverings.

Discussion

Unfortunately for Ms McDowell the conflicting advice she was given was incorrect and she does need to have written approval to install window guards or bars outside her windows. In the absence of written approval the Board may require that the window guards be removed from the outside of her windows.

Since it was seven years after installation of the window bars before the Condominium determined that they were unacceptable, the penalty charges from the Condominium seem excessive. Further, it is not unreasonable for Ms McDowell to exhaust the appeal fora and thus it is not appropriate to impose the community's legal fees on her.

Conclusions of Law

Ms McDowell does not have the required written approval of the Board of Directors of Cloverleaf Center II Condominium and will need to remove her window guards from the exterior of her unit. She is not prohibited from installing bars or window guards on the interior side of her windows without approval from the Board of Directors, so long as such installation does not affect the structural integrity of the building.

ORDER

Ms McDowell must remove the window guards from the outside of her windows within

30 days of the date of this order. Thereafter, Cloverleaf Center II Condominium may impose a fine, in accordance with the Condominium documents, if the window guards are still on the outside of Ms McDowell's windows. The \$150 fine she has paid is to be reccredited to her.

Panel members Vicki Satern Vergagni and Kevin Gannon have concurred in the foregoing decision and order.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership Communities